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 NORTHERN DISTRICT OF CALIFORNIA
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5 Attorneys for Plaintiff CRAIG YATES

MEJ

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

5404

10 CRAIG YATES

11 Plaintiff,

12 vs.

13 YEE MEI CHEUNG & FAMILY; YEE
 14 MEI CHEUNG; TAT CHEUNG; MACIEL
 15 CICERO; LAGHAEI FARID; WAI BING
 16 CHEUNG; YOUNG NG YING; VILLAGE
 17 PIZZERIA; VILLAGE PIZZERIA, INC.;
 THIDWICK BOOKS; LEA GREY;
 PERIOD GEORGE; GIBSON LINES,
 LLC; DONALD GIBSON; and DOES 1
 through 50, Inclusive,

18 Defendants.

Case No.
 Civil Rights

**COMPLAINT FOR INJUNCTIVE &
 DECLARATORY RELIEF AND
 DAMAGES: DENIAL OF CIVIL
 RIGHTS OF A DISABLED PERSON IN
 VIOLATION OF THE AMERICANS
 WITH DISABILITIES ACT OF 1990,
 AND CALIFORNIA'S DISABLED
 RIGHTS STATUTES
 DEMAND FOR JURY TRIAL**

[Proper Intradistrict Assignment: San
 Francisco/Oakland]

20 Plaintiff CRAIG YATES, on behalf of himself and all other similarly situated disabled
 21 persons, hereby complains of Defendants YEE MEI CHEUNG & FAMILY, a California
 22 General Partnership, and as the owner of the subject parcel; YEE MEI CHEUNG, an
 23 individual, and as a General Partner in YEE MEI CHEUNG & FAMILY; TAT CHEUNG, an
 24 individual, and as a General Partner in YEE MEI CHEUNG & FAMILY; MACIEL CICERO,
 25 an individual, as the owner of Village Pizzeria at 1 Clement Street; LAGHAEI FARID, an
 26 individual, as the owner of Village Pizzeria at 1 Clement Street; WAI BING CHEUNG, an
 27 individual, and as a General Partner in YEE MEI CHEUNG & FAMILY; YOUNG NG
 28 YING, an individual, and as a General Partner in YEE MEI CHEUNG & FAMILY;

VILLAGE PIZZERIA, a business entity, form unknown; VILLAGE PIZZERIA, INC., a California Corporation, as the owner of Village Pizzeria at 1 Clement Street; THIDWICK BOOKS, a business entity, form unknown; LEA GREY, an individual, and as the owner of Thidwick Books at 11 Clement Street; PERIOD GEORGE, a business entity, form unknown; GIBSON LINES, LLC, a California Limited Liability Company, and as the owner of Period George at 7 Clement Street; DONALD GIBSON, an individual, and as the owner of Period George; and DOES 1 through 50, Inclusive (hereafter "Defendants"), and demands a trial by jury, and alleges as follows:

INTRODUCTION

1. This case involves the disabled accessibility of the Building and businesses located at #s 1, 7 and 11 Clement Street, San Francisco, CA, which each exclude persons with disabilities in wheelchairs, particularly numbers 7 and 11, which have steep wooden ramps leading to a step at their entrances. These are extreme tipping hazards. Plaintiff CRAIG YATES is a person with physical disabilities and utilizes a wheelchair for mobility. His goal is positive: make the facility available to all persons alike regardless of their physical condition.

2. The configuration of the building and subject businesses, particularly its entrances, and public restrooms, deny "full and equal" access required by Title III of the Americans With Disabilities Act of 1990, the California Disabled Rights Acts (sections 54 and 54.1 ff Civil Code), and Title 24 of the California Code of Regulations (now known as the California Building Code). As a result, Plaintiff has been continuously denied access and/or deterred from visiting the subject building and businesses during the two years preceding the filing of this complaint, suffered violation of his Civil Rights to full and equal access, suffered a denial of his right to due process, was embarrassed and humiliated, and suffered statutory and general damages. Plaintiff seeks damages and injunctive relief requiring provision of access under the ADA at section 308; and injunctive relief for "full and equal access" and statutory damages under California law.

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JURISDICTION AND VENUE

3. This Court has jurisdiction of this action pursuant to 28 U.S.C. 1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.* Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same facts, are also brought under California law, including but not limited to violations of California Health & Safety Code Sections 19955 *et seq.*, including Section 19959; Title 24 California Code of Regulations; and California Civil Code Sections 54 and 54.1 *et seq.*

4. Venue is proper in this court pursuant to 28 U.S.C. 1391(b) and is founded on the fact that the real property which is the subject of this action is located in this district and that Plaintiff's causes of action arose in this district.

5. Intradistrict Jurisdiction. Under Local Rules 3-2 (c) and (d), intradistrict assignment to the San Francisco District is appropriate because the real property that is the subject of this action is located in Marin County, California and Plaintiff's causes of action arose in San Francisco.

6. Plaintiff alleges continuous and ongoing discrimination. Plaintiff has visited this building and the subject businesses on numerous occasions, and has also been deterred from returning on other occasions and on a sustained basis. Plaintiff's several complaints to the Defendants, both in writing and oral, have been largely ignored. Defendants' only responsive efforts were vague letters, placing the aforementioned hazardous ramps at the two entrances, and placing meaningless CASp inspection signs on the building. Plaintiff alleges that it would be a futile gesture to provide further notices of violations relating to Plaintiff's continuous visits and deterrence, which are certain to occur on regular basis following the filing of this complaint. Therefore, Plaintiff reserves, and will seek to supplement his complaint at time of trial as to his subsequent events, according to proof.

PARTIES

7. At all times relevant to this complaint, Plaintiff qualified as a "person with a disability," as this term is used under California law and under federal laws including but not

1 limited to Title III of the ADA. Plaintiff requires the use of a wheelchair for traveling about
2 in public places.

3 8. At all times relevant herein, Defendants YEE MEI CHEUNG & FAMILY;
4 YEE MEI CHEUNG; TAT CHEUNG; MACIEL CICERO; LAGHAEI FARID; WAI BING
5 CHEUNG; YOUNG NG YING; VILLAGE PIZZERIA; VILLAGE PIZZERIA, INC.;
6 THIDWICK BOOKS; LEA GREY; PERIOD GEORGE; GIBSON LINES, LLC; DONALD
7 GIBSON; and DOES 1 through 50, Inclusive, were and/or are the current, future or
8 prospective owners and operators, lessors and/or lessees of public facilities, and subject to the
9 requirements of California State law requiring full and equal access to public facilities
10 pursuant to Sections 4450 et seq. of the Government Code; 19955-19959 of the Health &
11 Safety Code; Sections 54.1 and 54.3 Civil Code; and subject to Title III of the Americans
12 With Disabilities Act of 1990; and to all other legal requirements referred to in this complaint.
13 Plaintiff does not know the relative responsibilities of Defendants in the ownership, control,
14 and operation of the facilities herein complained of, and alleges a joint venture and common
15 enterprise by all such Defendants.

16 9. Plaintiff seeks to hold responsible the tenants VILLAGE PIZZERIA;
17 VILLAGE PIZZERIA, INC.; MACIEL CICERO; LAGHAEI FARID; and DOES 1 through
18 50 responsible for only the portion of the building occupied by these tenants (Village
19 Pizzeria), plus any associated common areas.

20 10. Plaintiff seeks to hold responsible the tenants THIDWICK BOOKS, LEA
21 GREY, and DOES 1 through 50 responsible for only the portion of the building occupied by
22 these tenants (Thidwick Books), plus any associated common areas.

23 11. Plaintiff seeks to hold responsible the tenants PERIOD GEORGE; GIBSON
24 LINES, LLC; DONALD GIBSON; and DOES 1 through 50, Inclusive for only the portion of
25 the building occupied by these tenants (Period George), plus any associated common areas.

26 12. Plaintiff is informed and believes that each of the Defendants herein, including
27 DOES 1 through 50, inclusive, is the owner, constructive owner, beneficial owner, trust,
28 trustee, agent, ostensible agent, alter ego, master, servant, employer, employee, representative,

1 franchiser, franchisee, joint venturer, partner, associate, parent company, subsidiary, board,
 2 commission, department, or other governmental agency, representative, or such similar
 3 capacity, of each of the other Defendants, and was at all times acting and performing, or
 4 failing to act or perform, within the course and scope of his, her or its authority as a owner,
 5 constructive owner, beneficial owner, agent, trust, trustee, ostensible agent, alter ego, master,
 6 servant, employer, employee, representative, franchiser, franchisee, joint venturer, partner,
 7 associate, parent company, subsidiary, board, commission, department, or other governmental
 8 agency, representative, or such similar capacity, and with the authorization, consent,
 9 permission or ratification of each of the other Defendants, and is responsible in some manner
 10 for the acts and omissions of the other Defendants in proximately causing the violations and
 11 damages complained of herein, and have approved or ratified each of the acts or omissions of
 12 each other defendant, as herein described. Plaintiff will seek leave to amend when the true
 13 names, capacities, connections, and responsibilities of Defendants YEE MEI CHEUNG &
 14 FAMILY; YEE MEI CHEUNG; TAT CHEUNG; MACIEL CICERO; LAGHAEI FARID;
 15 WAI BING CHEUNG; YOUNG NG YING; VILLAGE PIZZERIA; VILLAGE PIZZERIA,
 16 INC.; THIDWICK BOOKS; LEA GREY; PERIOD GEORGE; GIBSON LINES, LLC;
 17 DONALD GIBSON; and DOES 1 through 50, Inclusive, are ascertained.

18 19 **FACTUAL ALLEGATIONS**

20 13. Further, the subject building and businesses and their facilities, including their
 21 paths of travel, entrance facilities, counters, public restrooms, aisles, dining tables, and other
 22 facilities, are each a "public accommodation or facility" subject to the requirements of
 23 Government Code sections 4450 et seq., and of the California Civil Code sections 51, 54,
 24 54.1, and 54.3. On information and belief, each such facility has, since January 1, 1968,
 25 undergone unfinished "new construction," and/or "alterations, structural repairs, and
 26 additions," each of which has subjected the subject building and businesses and its public
 27 facilities to state disabled access requirements per section 19959 Health & Safety Code, and
 28 since July 1, 1982, per provisions of Title 24 of the California Code of Regulations.

1 14. Plaintiff has visited the subject building and businesses establishment on
2 numerous occasions as a paying customer in the last two years, and seeks actual and
3 deterrence damages for the two year period that proceeds the filing of this complaint. The
4 principal barrier is fundamental to the use of the facility. The front entrances of all three
5 business are inaccessible (lacking a level landing at #1, and the total absence of a vertical
6 means of access at #7 and #11), inaccessible dining tables at #1, inaccessible aisle ways at #7
7 and #11, inaccessible transaction counters, and inaccessible route of travel to the shared
8 common bathroom in the rear hallway. On information and belief, Defendants have failed to
9 provide access to multiple other facilities on site, including but not limited to, the accessibility
10 of the interior facilities of the public restrooms, and condiment counters at #1. Plaintiff's
11 legal representatives will require a formal inspection opportunity to measure and photograph
12 the facilities and provide a complete inventory of all barriers affecting persons with
13 disabilities who use wheelchairs for mobility such as Plaintiff.

14 15. Plaintiff has complained in writing to Defendants, and, on information and
15 belief Defendants have knowledge, or received notice, of Plaintiff's complaints and the
16 inability of persons like Plaintiff to use facilities at the subject building and businesses.
17 Despite knowledge of the access problems, and complaints from other disabled patrons, and
18 the passage of extended time since Plaintiff and other disabled persons first provided notice of
19 these deficiencies, Defendants have failed to investigate these problems, and have failed to
20 take the necessary action to provide legally required access features to allow "full and equal"
21 use of the premises by physically disabled persons.

22 16. Title III of the ADA and California law required the removal of all such
23 barriers.

24 17. On information and belief, as a result of all Defendants' above stated acts and
25 omissions, Plaintiff suffered loss of his Civil Rights to his statutory and general damage.

26 18. Moreover, Plaintiff and other similarly situated disabled persons will continue
27 to be damaged on a continuous basis as long as Defendants fail to provide proper disabled
28 access in the respects complained of, as they will either be discouraged from using the subject

1 building and businesses, or to make the visit despite the obstacles to access, they would have
2 to encounter, and suffer, additional discriminatory experiences.

3 19. Plaintiff has no adequate remedy at law as to the recurring damages facing him
4 each time he returns to these inaccessible facilities. Unless the relief requested herein is
5 granted, Plaintiff and many other physically disabled persons will each suffer irreparable
6 harm in that their fundamental right to accessible public facilities while patronizing the
7 subject building and businesses will be denied and abridged.

8 20. Plaintiff is further informed and believes that during the applicable statutory
9 periods the named Defendants and each of them have been made aware orally and in writing,
10 of the inaccessibility of their public facility/business to disabled persons, such as Plaintiff, and
11 other persons with disabilities similarly situated, and of the federal and state legal obligations
12 of owners and operators of public facilities to make their facilities accessible to disabled
13 persons. Despite being informed of such effect on disabled persons and the manner in which
14 their practices and lack of accessible facilities were continuing to discriminate against
15 disabled persons on a day-to-day basis, said Defendants and each of them knowingly and
16 willfully failed and refused to take proper steps to rectify this situation and to provide full and
17 equal access for disabled persons to each public facility referred to herein.

18 21. Plaintiff requests that an injunction be ordered requiring that Defendants make
19 all such facilities herein described, accessible to and usable by disabled persons, and instruct
20 all employees as to proper policies to facilitate access, and set up practices and procedures to
21 ensure that no disabled person who is mobility impaired is denied the use of the
22 aforementioned facilities that are open to the general public, and that all such facilities be
23 made "accessible to and usable by" physically disabled persons.

24 22. Plaintiff has no adequate remedy at law as to facing the recurring damages
25 facing him each time that he returns to these inaccessible facilities, and unless the relief
26 requested herein is granted, Plaintiff and other disabled persons will each suffer irreparable
27 injury by the deprivation of access to the specified public facilities operated by Defendants.

28 ////

FIRST CAUSE OF ACTION:**Violations of the Americans with Disabilities Act of 1990****42 USC §§ 12101ff**

23. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 22 of this complaint and incorporates them herein as if separately repled.

24. Pursuant to law, in 1990 the United States Congress made findings per 42 U.S.C. Section 12101 regarding physically disabled persons, finding that laws were needed to more fully protect "some 43 million Americans with one or more physical or mental disabilities;" that "historically society has tended to isolate and segregate individuals with disabilities;" that "such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;" that "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living and economic self sufficiency for such individuals;" and that "the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous..."

25. Congress stated as its purpose in passing the Americans with Disabilities Act (42 USC § 12101(b)):

It is the purpose of this act —

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal government plays a central role in enforcing the standards established in this act on behalf of individuals with disabilities; and

(4) to invoke the sweep of Congressional authority, including the power to enforce the 14th Amendment and to regulate commerce, in order to address the

1 major areas of discrimination faced day to day by people with disabilities.

2 (Emphasis added)

3 26. As part of the Americans with Disabilities Act, Public Law 101-336,
4 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services
5 Operated by Private Entities" (42 U.S.C 12181ff). Defendants' facility is among "private
6 entities" which are considered "public accommodations" and "commercial facilities."

7 27. Pursuant to Section 302 [42 U.S.C 12182], "[n]o individual shall be
8 discriminated against on the basis of disability in the full and equal enjoyment of the goods,
9 services, facilities, privileges, advantages, or accommodations of any place of public
10 accommodation by any person who owns, leases, or leases to, or operates a place of public
11 accommodation."

12 28. Among the general prohibitions of discrimination included in Section
13 302(b)(1)(A) are the following:

14 § 302(b)(1)(A)(i): "DENIAL OF PARTICIPATION. — It shall be
15 discriminatory to subject an individual or class of individuals on the basis of a
16 disability or disabilities of such individual or class, directly, or through
17 contractual, licensing, or other arrangements, to a denial of the opportunity of
18 the individual or class to participate in or benefit from the goods, services,
19 facilities, privileges, advantages, or accommodations of an entity."

20 § 302(b)(1)(A)(ii): "PARTICIPATION IN UNEQUAL BENEFIT — It shall
21 be discriminatory to afford an individual or class of individuals, on the basis of
22 a disability or disabilities of such individual or class, directly, or through
23 contractual, licensing, or other arrangements with the opportunity to participate
24 in or benefit from a good, service, facility, privilege, advantage, or
25 accommodation that is not equal to that afforded to other individuals."

26 § 302(b)(1)(A)(iii): "SEPARATE BENEFIT. — It shall be discriminatory to
27 provide an individual or class of individuals, on the basis of a disability or
28 disabilities of such individual or class, directly, or through contractual,

1 licensing, or other arrangements with a good, service, facility, privilege,
2 advantage, or accommodation that is different or separate from that provided to
3 other individuals, unless such action is necessary to provide the individual or
4 class of individuals with a good, service, facility, privilege, advantage, or
5 accommodation, or other opportunity that is as effective as that provided to
6 others.”

7 29. Among the specific prohibitions against discrimination in the ADA are
8 included the following:

9 § 302(b)(2)(A)(ii): “A failure to make reasonable modifications in policies,
10 practices or procedures when such modifications are necessary to afford such
11 goods, services, facilities, privileges, advantages or accommodations to
12 individuals with disabilities...”

13 § 302(b)(2)(A)(iv): “A failure to remove architectural barriers, and
14 communication barriers that are structural in nature, in existing facilities...
15 where such removal is readily achievable;”

16 § 302(b)(2)(A)(v): “Where an entity can demonstrate that the removal of a
17 barrier under clause (iv) is not readily achievable, a failure to make such
18 goods, services, facilities, privileges, advantages, or accommodations available
19 through alternative methods if such methods are readily achievable.” The acts
20 and omissions of Defendants set forth herein were in violation of Plaintiff’s
21 rights under the ADA, Public Law 101-336, and the regulations promulgated
22 thereunder, 28 CFR Part 36ff.

23 30. The removal of each of the barriers complained of by Plaintiff as hereinabove
24 alleged (i.e., in paragraph 14) were — at all times on or after January 26, 1992 — “readily
25 achievable.”

26 31. Further, at all times herein mentioned, modification of or removal of these
27 barriers was “readily achievable” under the factors specified in the Americans with
28 Disabilities Act of 1990, including but not limited to section 301(9) [42 U.S.C. 12181], and

1 the Regulations adopted thereto.

2 32. "Discrimination" is further defined under Section 303(a)(2) of the ADA, for a
3 facility or part thereof that was altered after the effective date of Section 303 of the ADA in
4 such a manner as to affect or that could affect the usability of the facility or part thereof by
5 persons with disabilities, to include per Section 303(a)(2) [42 U.S.C. 12183], "a failure to
6 make alterations in such a manner that, to the maximum extent feasible, the altered portions of
7 the facility are readily accessible to and usable by individuals with disabilities, including
8 individuals who use wheelchairs." Additionally, for alterations to areas of a facility involving
9 a "primary function," discrimination under the ADA, per Section 303(a)(2) (42 U.S.C.
10 12183), also includes the failure of an entity "to make the alterations in such a manner that, to
11 the maximum extent feasible, the path of travel to the altered area and the bathrooms,
12 telephones, and drinking fountains serving the altered area, are readily accessible to and
13 usable by individuals with disabilities." On information and belief, the subject building
14 constitutes a "commercial facility," and Defendants have, since the date of enactment of the
15 ADA, performed alterations (including alterations to areas of primary function) to the subject
16 building and its facilities, public accommodations, and commercial facilities, which fail to
17 provide facilities and paths of travel to such areas that are readily accessible to and usable by
18 individuals with disabilities, in violation of Section 303(a)(2), and the regulations
19 promulgated thereunder, 28 CFR Part 36ff. This includes the facilities and barriers identified
20 in paragraph 14.

21 33. Pursuant to the Americans with Disabilities Act, 42 USC 12188ff, Section 308,
22 Plaintiff is entitled to the remedies and procedures set forth in Section 204, subsection (a), of
23 the Civil Rights Act of 1964 (42 USC 2000a-3, at subsection (a)), as Plaintiff is being
24 subjected to discrimination on the basis of disability in violation of this title or has reasonable
25 grounds for believing that he is about to be subjected to discrimination in violation of Sections
26 302 and 303. On information and belief, Defendants have continued to violate the law and
27 deny the rights of Plaintiff and of other disabled persons to access this public accommodation.
28 Pursuant to Section 308(a)(2), "[i]n cases of violations of Section 302(b)(2)(A)(iv)...

1 injunctive relief shall include an order to alter facilities to make such facilities readily
2 accessible to and usable by individuals with disabilities to the extent required by this title.”

3 34. As a result of Defendants' acts and omissions in this regard, Plaintiff has been
4 required to incur legal expenses and attorney fees, as provided by statute, in order to enforce
5 Plaintiff's rights and to enforce provisions of the law protecting access for disabled persons
6 and prohibiting discrimination against disabled persons. Plaintiff therefore seeks recovery of
7 all reasonable attorneys' fees, litigation expenses (including expert fees) and costs, pursuant
8 to the provisions of Section 505 of the ADA (42 U.S.C. 12205) and the Department of
9 Justice's regulations for enforcement of Title III of the ADA (28 CFR 36.505). Additionally,
10 Plaintiff's lawsuit is intended not only to obtain compensation for damages to Plaintiff, but
11 also to require the Defendants to make their facilities accessible to all disabled members of
12 the public, justifying "public interest" attorneys' fees pursuant to the provisions of California
13 Code of Civil Procedure Section 1021.5.

14 WHEREFORE, Plaintiff pray that this Court grant relief as hereinafter stated:

15
16 **SECOND CAUSE OF ACTION:**

17 **Denial of Full and Equal Access to a Person with a Disability**

18 **In a Public Facility,**

19 **In Violation of California's Disabled Access Statutes**

20 35. Plaintiff repleads and incorporates by reference, as if fully set forth again
21 herein, the allegations contained in Paragraphs 1 through 34 of this complaint and
22 incorporates them herein as if separately repled.

23 36. Plaintiff Craig Yates and other similarly situated physically disabled persons
24 (whose physical conditions require the use of a wheelchair or other mobility devices) are
25 unable to use public facilities at subject building and businesses on a "full and equal" basis
26 unless such facilities are brought into compliance with the provisions of California Health &
27 Safety Code sections 19955 et seq. Plaintiff is a member of that portion of the public whose
28 rights are protected by the provisions of sections 19955 et seq. Health & Safety Code.

1 37. Under section 54.1 Civil Code, persons with disabilities are entitled to "full
2 and equal access" to public accommodations. "Public accommodations" are further defined
3 as a building, structure, facility complex, or improved area which is used by the general
4 public and attendant facilities.

5 38. Defendants participate in the operation of the subject public accommodation,
6 subjecting the property and all such Defendants to the requirements of California's Disabled
7 Rights statutes.

8 39. Health & Safety Code Section 19955 provides in pertinent part:

9 (a) The purpose of this part is to insure that public accommodations
10 or facilities constructed in this state with private funds adhere to the provisions
11 of Chapter 7 (commencing with § 4450) of Division 5 of Title 1 of the
12 Government Code. For the purposes of this part "public accommodation or
13 facilities" means a building, structure, facility, complex, or improved area
14 which is used by the general public and shall include auditoriums, hospitals,
15 theaters, restaurants, hotels, motels, stadiums, and conventions centers.

16 40. Health and Safety Code Section 19956, which appears in the same chapter as
17 section 19955, provides, in pertinent part: "[a]ll public accommodations constructed in this
18 state shall conform to the provisions of Chapter 7 (commencing with § 4450) of Division 5 of
19 Title 1 of the Government Code...."

20 41. Section 19956 Health & Safety Code was operative July 1, 1970, and is
21 applicable to all public accommodations constructed or altered after that date. On information
22 and belief, portions of the subject building and businesses were constructed and/or altered
23 after July 1, 1970, and portions of the subject building were structurally remodeled, altered
24 and have undergone structural repairs or additions after July 1, 1970. Such construction
25 required such building and its public accommodation facilities to be subject to the
26 requirements of Part 5.5, Sections 19955, et seq., of the Health and Safety Code, which
27 requires provision of access upon "alterations, structural repairs or additions" per Section
28 19959 Health & Safety Code, or upon a change of occupancy (a form of "alteration").

42. Multiple construction, alterations, structural repairs and/or additions were completed on the subject building and businesses property after the January 1, 1968 effective date of Government Code Sections 4450 et seq., and the July 1, 1970 effective date of Healthy & Safety Code Section 19955-19959, legally requiring that proper access for disabled persons be provided in each and every regard complained of in the Complaint.

43. Construction or alteration at such facilities also triggered access requirements pursuant to section 4456 Government Code and Title 24 of the California Code of Regulations. Further, section 19955 Health & Safety Code also requires that, "[w]hen sanitary facilities are made available for the public, clients or employees in such accommodations or facilities, they shall be made available for the physically handicapped." Title 24, California Code of Regulations (formerly known as the California Administrative Code and now known as the California Building Code), was in effect at the time of each alteration which, on information and belief, occurred at such public facility since January 1, 1982, thus requiring access complying with the specifications of Title 24 whenever each such "alteration, structural repair or addition" is carried out. Title 24 imposes additional access requirements with which Defendants have not complied, including additional requirements for accessible restrooms which serve the areas of alteration.

44. As a result of the actions and failure to act of Defendants and each of them, and as a result of the failure to provide proper disabled accessible facilities as above described, Plaintiff Craig Yates was denied his Civil Rights, including his right to full and equal access to public facilities, was embarrassed and humiliated, suffered physical, psychological and mental injuries and emotional distress, all to the general damages of Plaintiff in an amount within the jurisdiction of this Court.

45. Plaintiff seeks damages on a continuing and ongoing basis for the statutory period preceding the filing of his complaint herein, and the continuous and ongoing damages suffered thereafter.

46. As a result of the Defendants' continuing failure to provide proper access for disabled persons to use the public facilities, Plaintiff has continually been denied his rights to

1 full and equal access to subject building and businesses and its attendant facilities on a
 2 continuous basis for the above specified period up to the filing of this complaint and
 3 continuing until Defendants provide accessible facilities in each of the respects complained of
 4 herein.

5 47. The acts and omissions of Defendants as complained of herein are continuing
 6 to have the effect of wrongfully excluding Plaintiff and other members of the public who are
 7 physically disabled wheelchair users from full and equal access to the public facilities
 8 involved. Such acts and omissions continue to treat Plaintiff as inferior and a second class
 9 citizen and serve to discriminate against him on the sole basis that he is physically disabled
 10 and requires the use of a wheelchair for movement in public places; Plaintiff is unable, so
 11 long as such acts and omissions of Defendants continue, to achieve full and equal access to
 12 these public facilities. The acts of Defendants have proximately caused and will continue to
 13 cause irreparable injury to Plaintiff if not enjoined by this court.

14 48. WHEREFORE, Plaintiff asks this court to preliminarily and permanently
 15 enjoin any continuing refusal by those Defendants which currently own, operate or lease the
 16 premises, or who control such premises as the operating public entities, to grant such access to
 17 Plaintiff and other similarly situated persons, and to require such Defendants to comply
 18 forthwith with the applicable statutory requirements relating to access for the disabled. Such
 19 injunctive relief is provided by section 19953 Health & Safety Code and California Civil
 20 Code section 55. Plaintiff further requests that the court award damages, attorneys' fees,
 21 litigation expenses and costs to Plaintiff pursuant to section 19953 Health & Safety Code,
 22 Civil Code section 55, and Code of Civil Procedure §1021.5, all as hereinafter prayed.

23 24 **THIRD CAUSE OF ACTION:**

25 **Violation of California's Disabled Rights Acts**

26 **(§§54, 54.1 and 55 Civil Code)**

27 49. Plaintiff repleads and incorporates by reference, as if fully set forth again
 28 herein, the allegations contained in paragraphs 1 through 48 of this complaint and

1 incorporates them herein as if separately rep[re]sented.

2 50. The aforementioned acts and omissions of Defendants and each of them
3 constitute a denial of equal access to and use and enjoyment of these facilities by persons with
4 disabilities, including Plaintiff Craig Yates. Said acts and omissions are also in violation of
5 provisions of Title 24 of the California Administrative Code (later known as the California
6 Code of Regulations and the California Building Code.)

7 51. On or about the above dates complained of, and on multiple occasions
8 thereafter, including occasions of deterrence, Plaintiff Craig Yates suffered violations of
9 sections 54 and 54.1 Civil Code in that he was denied full and equal access to the subject
10 building and businesses facilities on the basis that he was a physically disabled persons.

11 52. Plaintiff is further informed and believes that before and after such dates, the
12 named Defendants and each of them were made aware orally and in writing of the
13 inaccessibility of their public facility/business to disabled persons, such as Plaintiff, and other
14 persons with disabilities similarly situated, and of the federal and state legal obligations of
15 owners and operators of public facilities to make their facilities accessible to disabled persons.
16 Despite being informed of such effect on disabled persons and the manner in which their
17 practices and lack of acceptable facilities were continuing to discriminate against disabled
18 persons on an ongoing basis, said Defendants and each of them knowingly and willfully failed
19 and refused to take any steps to rectify this situation and to provide full and equal access for
20 disabled persons to each public facility referred to herein.

21 53. At all times since Plaintiff's above specified complaints, and on information
22 and belief for periods prior to this date, Defendants were on notice of the requirements of the
23 law relating to provision for full and equal disabled access. Especially as Defendants were on
24 full notice, each day that Defendants have continued to deny access to disabled persons
25 constitutes a new and distinct violation of Plaintiff's right to full and equal access to this
26 public facility, in violation of Sections 54 and 54.1, et seq. Civil Code. In the event of a
27 default judgment against any particular defendant, Plaintiff will seek an injunction requiring
28 provision of all access called for in this complaint, plus damages of \$1,000 per incident of

1 encounter or deterrence from the date of Plaintiff's filing of this complaint, plus reasonable
 2 attorneys' fees, litigation expenses and costs as set by the court, until the site is brought into
 3 full compliance with state and federal access laws protecting the rights of the disabled, or,
 4 alternatively, until the date of entry of default.

5 54. As a result of the denial of equal access to Defendants' facilities due to the acts
 6 and omissions of Defendants and each of them in owning, operating, and maintaining this
 7 subject public facility, Plaintiff Craig Yates suffered violations of his Civil Rights including
 8 but not limited to rights under sections 54 and 54.1 Civil Code, and suffered physical injury
 9 and discomfort, emotional shock, mental and emotional distress, embarrassment and
 10 humiliation, all to his damages as hereinafter stated. Defendants' actions and omissions to act
 11 constituted discrimination against Plaintiff on the sole basis that he was physically disabled
 12 and unable, because of the architectural barriers created by the Defendants in violation of the
 13 subject laws, to use the public facilities on a full and equal basis as other persons.

14 55. Plaintiff seeks damages on a continuing and ongoing basis for the statutory
 15 period preceding the filing of his complaint, and the continuous and ongoing damages
 16 suffered thereafter.

17 56. Subject to the terms of the preceding paragraph, Plaintiff also seeks damages
 18 against all Defendants for the violation of his rights as a person with a disability during his
 19 patronage at the subject building and businesses, and on multiple visits thereafter, according
 20 to proof, pursuant to section 54.3 Civil Code, including a trebling of all statutory and actual
 21 damages, general and special, available pursuant to section 54.3 Civil Code. Plaintiff also
 22 seeks such damages for such Defendants' continuing to maintain such facilities in an
 23 inaccessible condition since date of his earliest visit, and continuing to the date of the filing of
 24 the original complaint, and thereafter until Defendants provide full and equal access. Plaintiff
 25 also seeks injunctive relief against all Defendants pursuant to section 55 Civil Code, requiring
 26 Defendants to make their facilities accessible to disabled persons in each of the respects
 27 complained of herein.

28 57. As a result of Defendants' acts and omissions in this regard, Plaintiff Craig

1 Yates has been required to incur legal expenses and hire attorneys in order to enforce his
 2 rights and enforce provisions of the law protecting access for persons with disabilities and
 3 prohibiting discrimination against persons with disabilities. Plaintiff therefore seeks recovery
 4 in this lawsuit for all reasonable attorneys' fees and costs incurred pursuant to the provisions
 5 of sections 54.3 and 55 Civil Code. Additionally, Plaintiff's lawsuit is intended not only to
 6 obtain compensation for damages to Plaintiff, but also to require the Defendants to make their
 7 facilities accessible to all disabled members of the public, conferring a significant public
 8 benefit, and justifying attorneys' fees, litigation expenses and costs pursuant to the provisions
 9 of section 1021.5 Code of Civil Procedure.

10 WHEREFORE, Plaintiff prays for damages and declaratory and injunctive relief as
 11 hereinafter stated.

12 13 **FOURTH CAUSE OF ACTION:**

14 **Damages and Injunctive Relief for Violation of Title III of the** 15 **Americans With Disabilities Act Under California's Disabled Rights Act**

16 58. Plaintiff repleads and incorporates by reference, as if fully set forth again
 17 herein, the allegations contained in paragraphs 1 through 57 of this complaint and
 18 incorporates them herein as if separately repled.

19 59. Each violation of the Americans With Disabilities Act of 1990, as complained
 20 of in the First Cause of Action hereinabove (the contents of which cause of action is
 21 incorporated herein as if separately repled), is also a violation of section 54(c) and section
 22 54.1(d) California Civil Code, further and independently justifying damages, injunctive and
 23 other statutory relief per section 54.3 and 55 California Civil Code.

24 60. Plaintiff seeks damages on a continuing and ongoing basis for the statutory
 25 period preceding the filing of his complaint herein, and the continuous and ongoing damages
 26 suffered thereafter.

27 61. Plaintiff has no adequate remedy at law, and unless the relief requested herein
 28 is granted, Plaintiff will suffer irreparable harm in that they will continue to be discriminated

1 against and denied access to the specified public facilities. Because Plaintiff seeks
 2 improvement of access for persons with disabilities, which will benefit a significant portion of
 3 the public, Plaintiff seeks attorneys' fees pursuant to section 1021.5 California Code of Civil
 4 Procedure, section 54.3 and 55 Civil Code; and 19953 Healthy & Safety Code.

5 WHEREFORE, Plaintiff prays for relief as hereinafter stated.
 6

7 **FIFTH CAUSE OF ACTION:**

8 **Damages and Injunctive Relief under the Unruh Civil Rights Act**

9 **For Violation of Title III of the ADA**

10 62. Plaintiff repleads and incorporates by reference, as if fully set forth again
 11 herein, the allegations contained in Paragraphs 1 through 61 of this complaint and
 12 incorporates them herein as if separately repled.

13 63. Each violation of the Americans With Disabilities Act of 1990, as complained
 14 of in the First Cause of Action hereinabove (the contents of which causes of action are
 15 incorporated herein as if separately repled), is also a violation of section 51(f) of the Unruh
 16 Civil Rights Act, further and independently justifying damages of \$4,000 per offense,
 17 injunctive relief, and other statutory relief, all as previously pled, per sections 52 and common
 18 law decision.

19 64. Plaintiff seeks damages on a continuing and ongoing basis for the statutory
 20 period preceding the filing of the complaint herein, and the continuous and ongoing damages
 21 suffered thereafter.

22 65. As a result of Defendants' acts and omissions in this regard, Plaintiff has been
 23 required to incur legal expenses and attorney fees, as provided by statute, in order to enforce
 24 Plaintiff's rights and to enforce provisions of the law protecting access for disabled persons
 25 and prohibiting discrimination against disabled persons. Plaintiff therefore seeks recovery of
 26 all reasonable attorneys' fees, litigation expenses (including expert fees) and costs, pursuant
 27 to the provisions of Section 52 of the Civil Code. Additionally, Plaintiff's lawsuit is intended
 28 not only to obtain compensation for damages to Plaintiff, but also to require the Defendants to

1 make their facilities accessible to all disabled members of the public, justifying "public
2 interest" attorneys' fees pursuant to the provisions of California Code of Civil Procedure
3 Section 1021.5.

4 WHEREFORE, Plaintiff prays for relief as hereinafter stated.

5
6 **SIXTH CAUSE OF ACTION:**

7 **(Declaratory Relief)**

8 66. Plaintiff repleads and incorporates by reference, as if fully set forth again
9 herein, the allegations contained in Paragraphs 1 through 65 of this complaint and
10 incorporates them herein as if separately replied.

11 67. A present and actual controversy exists among the respective rights and
12 obligations of Plaintiff and Defendants, and separately, as to the obligations that have been
13 impressed by the aforementioned statutes against the property irrespective of past or future
14 ownership. Plaintiff requests a judicial determination of his rights and such obligations in a
15 declaration, and also as to whether and to what extent Defendants' conduct and the current
16 configuration of the property violate applicable law.

17 68. Such a declaration is necessary and appropriate at this time in order that
18 Plaintiff may ascertain his rights. Such declaration is further necessary and appropriate to
19 prevent further harm or infringement of Plaintiff's Civil Rights.

20 Wherefore, Plaintiff prays the court grant relief as requested hereinbelow.

21
22 **SEVENTH CAUSE OF ACTION:**

23 **Violation of Government Code Section 12948**

24 69. Plaintiff repleads and incorporates by reference, as if fully set forth again
25 herein, the factual allegations contained in paragraphs 1 through 68 of this Complaint and
26 incorporate them herein as if separately replied.

27 70. Defendants' actions are in violation of Government Code Section 12948, and
28 the corresponding Civil Code Sections 51, 54, and 54.1.

71. Plaintiff seeks injunctive relief, statutory and compensatory damages, punitive damages, and attorneys fees under the FEHA.

Wherefore, Plaintiff prays that the Court grant relief as requested herein below.

EIGHTH CAUSE OF ACTION:

Negligence Per Se in Injuring Plaintiff Due to Violations of State and Federal Law

Protecting the Disabled, and Complete Indifference to the Certain Result

72. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the factual allegations contained in paragraphs 1 through 71 of this Complaint and incorporate them herein as if separately repled.

73. Defendants' actions, as previously pled, constitute negligence per se, as they constitute violations of state and federal laws protecting the rights and safety of disabled persons such as Plaintiff.

74. Further, any violation of the Americans With Disabilities Act of 1990 (as pled in the First Causes of Action as to their respective defendants hereinabove, the contents of which are repled and incorporated herein, word for word, as if separately restated hereafter), also constitutes a violation of Section 54(c) and Section 54.1(d) California Civil Code, thus independently justifying an award of damages and injunctive relief pursuant to California law on this basis, including but not limited to Civil Code Sections 54.3 and 55.

Wherefore, Plaintiff prays that the court grant relief as requested herein below.

PRAYER FOR RELIEF

Plaintiff prays that this Court award damages and provide relief as follows:

1. Grant injunctive relief requiring that those of the Defendants that currently own, operate, control or lease the subject premises, repair the premises and render them safe to disabled persons, and modify their policies and procedures, and otherwise provide "full and equal access" to the public areas herein complained of, and make such facilities "readily accessible to and usable by individuals with disabilities," according to the standards of

1 sections 51, 54 and 54.1 et seq. of the California Civil Code; Title 24 of the California
 2 Administrative Code; Sections 19955-19959 of the Health & Safety Code; Sections 4450-
 3 4456 of the California Government Code; Title III of the Americans With Disabilities Act of
 4 1990; the Americans With Disabilities Act Access Guidelines; and provide full and equal
 5 access to physically disabled persons, including Plaintiff, in all manners required by such
 6 statutes and government regulations;

7 2. Retain jurisdiction over the Defendants until such time as the Court is satisfied
 8 that Defendants' unlawful barriers no longer exist, and will not recur;

9 3. Issue a declaratory judgment that Defendants' actions and omissions, and
 10 failures, including to modify the premises in compliance with the law, and to make reasonable
 11 accommodations and reasonable modifications for Plaintiff and other similarly situated
 12 disabled persons violates the rights Plaintiff and other similarly situated persons rights under
 13 the Health & Safety Code Sections 19955-19959; Civil Code Sections 51, 54, and 54.1 et
 14 seq.; Americans With Disabilities Act of 1990, 42 U.S.C. sections 12101, et seq., and the
 15 regulations promulgated thereunder; and the due process clauses of the United States and
 16 California Constitutions.

17 4. Issue a declaratory judgment regarding the obligations impressed by law
 18 against the subject building and businesses, and declaring that Plaintiff is entitled to disabled
 19 accessible and usable subject building and businesses facilities including its accessible route
 20 to the main entrance, its public restrooms, its dining tables, and other facilities, so that they
 21 may make use of the public facilities and participate in the activities offered by Defendants
 22 without suffering discrimination or impediment on the basis of his disability;

23 5. Because Defendants have refused to remedy the violations at their facility after
 24 notice from Plaintiff, Plaintiff seeks an award of statutory and "actual" damages against all
 25 Defendants, including general damages and special damages, according to proof, against such
 26 Defendants pursuant to sections 52 and 54.3 Civil Code, and that these damages be trebled;

27 6. Award prejudgment interest on all damages;

28 7. Award all costs of this proceeding and all reasonable attorneys' fees, litigation

1 expenses and costs as provided by law, including but not limited to those recoverable pursuant
2 to the provisions of sections 54.3 and 55 Civil Code, section 1021.5 Code of Civil Procedure,
3 section 19953 Health & Safety Code, section 505 of the Americans With Disabilities Act; and

4 8. Punitive damages pursuant to Section 3294 Civil Code (Re: Seventh and
5 Eighth Causes of Action Only);

6 9. Grant such other and further relief as this Court may deem just and equitable.
7

8 Dated: November 27, 2010

THIMESCH LAW OFFICES

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11 TIMOTHY S. THIMESCH
12 Attorneys for Plaintiff CRAIG YATES

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff demands a jury on all claims for which a jury is permitted.

15 Dated: November 27, 2010

THIMESCH LAW OFFICES

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18 TIMOTHY S. THIMESCH
19 Attorneys for Plaintiff CRAIG YATES
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